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IN THE

Supreme Court of the United States

MARIE-THÉRESE ASSA'AD-FALTAS, MD, MPH,

Petitioner,

v.

THE UNIVERSITY OF SOUTH CAROLINA, *et al.*,

Respondents,

-and-

MARIE-THÉRESE ASSA'AD-FALTAS, MD, MPH,

Petitioner,

v.

THE ATTORNEY GENERAL OF VIRGINIA
FOR THE COMMONWEALTH OF VIRGINIA, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENTS THE UNIVERSITY OF SOUTH CAROLINA, *et al.*

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QUESTION PRESENTED

Did the Fourth Circuit Court of Appeals correctly conclude that the petitioner's utter failure and refusal to comply with court orders and her flagrant abuse of the discovery process fully warranted the sanction of dismissal in *Assa'ad-Faltas v. University of South Carolina*, No. 96-2159 and *Assa'ad-Faltas v. Attorney General of Virginia*, No. 96-2177?

PARTIES TO THE PROCEEDING

The petitioner's list of parties is correct with the exception of the spelling of J. O'Neal Humphries and Lawrence Dark.

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OPINIONS BELOW

The Fourth Circuit's unpublished decision in *Assa'ad-Faltas v. University of South Carolina* (hereinafter "the USC case") is set forth in the Appendix filed by the petitioner at A1-A3. The Fourth Circuit's unpublished decision in *Assa'ad-Faltas v. Attorney General* (hereinafter "the Attorney General case") is set forth in the petitioner's Appendix at A3-A5. Because the petitioner included in her Appendix only selected portions of Judge Joseph F. Anderson, Jr.'s July 11, 1996 Order on Plaintiff's Motion for Reconsideration in the USC case and his August 16, 1996 Substituted Order Denying Plaintiff's Motion to Alter or Amend in the Attorney General case, said orders are set forth in their entirety in the respondents' Appendix.

STATEMENT OF JURISDICTION

Rule 10 of the Rules of the Supreme Court of the United States clearly states, in relevant part, "A petition for a writ of certiorari will only be granted for compelling reasons." The respondents submit that this case, which involves merely a discovery dispute, is not within the character of the reasons the Court would consider a petition. As there are no compelling reasons to grant the petition, it should be denied.

FEDERAL STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

There are no federal statutes or constitutional provisions involved.

STATEMENT OF THE CASE

Far from involving important questions of law and novel constitutional issues as the petitioner claims, this case merely involves discovery disputes in which the petitioner's conduct was so deplorable that it warranted the sanctions of dismissal. Although the petitioner has argued the merits of her underlying cases in her unified petition for a writ of certiorari, as she did in her briefs to the Fourth Circuit Court of Appeals, the merits of her cases are wholly irrelevant as the merits were never reached by the district court or the Fourth Circuit Court of Appeals. As stated in United States District Judge Joseph F. Anderson, Jr.'s March 18, 1996 Order Dismissing Action with Prejudice in the USC case:

> Neither does this court suggest any belief as to whether plaintiff's allegations are or are not meritorious. Unfortunately, plaintiff's behavior has precluded this court from reaching the merits of her remaining claims. This is unfortunate, but it is plaintiff's own doing. If plaintiff wishes to avail herself of this court's authority to resolve disputes, she must abide by the rules of this court. She should not be allowed to complain that the merits of her case were never reached when she has engaged in every opportunity to avoid discovery and waste the court's time on unnecessary disputes or pointless collateral matters.

(March 18, 1996 Order at page 22) Furthermore, as noted by Judge Anderson in the Attorney General case, "[I]n deciding whether to dismiss a case for discovery abuse, the court

presumes that the underlying case is meritorious." (July 19, 1996 Order re Motions for Dismissal at page 41) Accordingly, the petitioner's "Questions Presented" in her petition are not properly before this Court, with the possible exception of question number nine relating to the imposition of FED. R. CIV. P. Rule 11 sanctions, which were assessed against her in the Attorney General case. The respondents would further note that, despite the petitioner's statement that the facts in this case are "uncontested," the petitioner's brief is replete with misrepresentations and unadorned falsehoods. Although it would be impossible and pointless to respond to each misrepresentation within the constraints of this brief, the respondents particularly take exception to the petitioner's false characterization of the actions involving Joan Altekruse and Victoria Eslinger, as well as her misrepresentations regarding the discovery she alleges to have provided in these matters.

Both the USC and Attorney General cases arise out of an employment relationship between the petitioner and the University of South Carolina's School of Medicine. The relationship ended in November, 1993 when the petitioner was terminated. The respondents in the Attorney General case, which was filed subsequent to the USC case, include those who were not properly served in the USC case, the lawyers who represented the defendants in the USC case, the husband of one of the lawyers, as well as two employees of the South Carolina Insurance Reserve Fund, which provides insurance to the University of South Carolina and other governmental entities. Both lawsuits were dismissed with prejudice as a result of the petitioner's misconduct and abuse of the Federal Rules of Civil Procedure. An overview of the events that followed the filing of the complaint alleging twelve causes of action against thirty-four defendants in the USC case is set out in Magistrate Judge Joseph R. McCrorey's July 19, 1995 Order and

Recommendation and in Judge Joseph F. Anderson, Jr.'s March 18, 1996 Order Dismissing Action with Prejudice. Judge Anderson's July 19, 1996 Order Re Motions to Dismiss explains the circumstances surrounding the dismissal of the Attorney General case. Several instances of the petitioner's innumerable acts of misconduct in each case are set forth below by way of example to this Court.

A. The USC case

1. Interrogatories and Document Production

The petitioner unilaterally thwarted the discovery process from the outset in this case. The respondents served their first interrogatories and requests for production on October 4, 1994. In what would become a pattern of evasive conduct, the petitioner provided no response, thereby necessitating the respondents' first motion to compel. The petitioner then responded to the respondents' interrogatories in a document which was replete with evasive, inadequate answers and frivolous objections. For example,[1] the respondents' fifth interrogatory to the petitioner requested the names, qualifications, etc. of any expert witnesses. The petitioner's eventual response provided, "Plaintiffs object to this interrogatory on the same grounds as to Interrogatories 1-3,

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[1]It is literally impossible to provide the Court an accurate picture of the petitioner's utter failure to provide any meaningful discovery by way of this brief. Although a few examples are set forth to provide the Court some flavor of her misconduct, a complete review of the voluminous record of this case is necessary to comprehend the extent of the petitioner's discovery abuses.

above; they do, however, answer it in the same manner they answered Interrogatories 1-3, above." The petitioner's joint response to interrogatories 1-3, which generally asked for names of witnesses, a summary of the facts known to such witnesses, and a list of documents which related to the case, consisted of several objections and the statement that "[p]laintiffs do state however, that every person and every document and/or object mentioned in their Complaint is a potential witness or exhibit."

Such responses prompted the respondents' second motion to compel. The court ordered the petitioner to respond more fully to said interrogatories and granted her an extension of time to respond to the interrogatories until June 9, 1995. The petitioner's failure to provide complete and adequate discovery responses a full eight months after the respondents' initial discovery was served resulted in their third motion to compel responses to interrogatories and for sanctions. This motion for sanctions was eventually granted, and the petitioner's action was dismissed as a result of her non-responsive and inadequate answers to interrogatories, together with her misconduct during document production, her deposition, and her general abuse of the discovery process.

As was the case with the respondents' interrogatories, the petitioner initially failed to respond at all to document production requests, causing the respondents to file a motion to compel. Thereafter, the petitioner sought a protective order in which she objected to having to "truck her massive production" to defense counsel's offices and otherwise typically included lengthy, irrelevant, and false material in her motion. The court denied the petitioner's motion for a protective order and the respondents' motion for sanctions, but granted the respondents' motion to compel and ordered the petitioner to produce the

responsive documents within twenty days. In keeping with her dilatory practices, the petitioner sought an extension of time to produce the documents on the twentieth day. The respondents again were constrained to file a motion to compel as a result of the petitioner's violation of the court's order requiring her to produce the documents within twenty days, particularly in light of the petitioner's deposition being scheduled to begin on May 25, 1995, two days after the deadline for the document production.

At the hearing scheduled to address this and other issues, the petitioner reiterated her alleged fear of going to offices of the respondents' counsel and described the responsive documents as so massive that a truck would be needed to transport them. A compromise was reached wherein the respondents' counsel and the petitioner would meet at a copy shop where the responsive documents would be inspected and copied. As a courtesy to the petitioner, a courier from the respondents' counsel's law firm was authorized by the court to assist the petitioner with loading and unloading the documents. Further, the petitioner was to produce a privilege log and submit it, along with a copy and the original of the documents, to the court on June 2, 1995. When the courier arrived at the petitioner's residence to help her load the documents, she refused to produce the documents, in violation of the court's May 30, 1995 Order. Thus, the respondents were again required to file yet another motion to compel and for sanctions.

Thereafter, at a hearing held on June 2, 1995 to address the issue of privileged documents and the respondents' motion to compel and for sanctions, the petitioner again asserted that she possessed a massive amount of documents and had not had time to assemble them when the courier arrived to assist her in loading them for document production. Notably, when the

petitioner finally delivered the documents to the office of the respondents' counsel on June 5, 1995, the documents consisted of only 713 pages. Obviously, the petitioner's representations that her documents were massive and required the use of a courier and a truck to transport them were false.

Further, in violation of the court's May 30, 1995 Order, the petitioner produced an inadequate privilege log and failed to produce the original and copy of the documents described therein. At this hearing, the petitioner represented that she possessed privileged documents pertaining to the case, including records and notes of telephone and other conversations with numerous individuals listed in her privilege log.

Subsequently, the court imposed FED. R. CIV. P. 37 monetary sanctions on the petitioner for failure to comply with the court's orders and warned her that further failure to obey court orders would result in further sanctions, "up to and including the dismissal of this action." The court imposed yet another deadline, this time June 5, 1995, for the petitioner to produce the documents which were initially requested by the respondents October 4, 1994. The court further provided the petitioner detailed instructions as to the requirements of a privilege log and ordered her to provide a sufficient log together with the original and a copy of the privileged documents to the court by June 6, 1995 for *in camera* inspection.

The petitioner appeared in court on June 6, 1995 with no document log and no documents, once again in violation of the court's orders. Moreover, she asserted that she had **no** responsive documents, despite her earlier specific indication on her privilege log, which the court determined to be insufficient, that she had in her possession records and notes of telephone

and other conversations with over thirty-nine individuals. The court again ordered the petitioner to produce an adequate privilege log along with the corresponding documents, this time setting the deadline of June 12, 1995. The petitioner failed to appear at the hearing on June 12, 1995 in violation of the court's June 7, 1995 Order. Although she later testified that her absence was caused by illness, the petitioner had been present at the office of the respondents' counsel on that same morning to reproduce audio tapes.

Yet again, the court indulged the petitioner and provided her another opportunity to produce the privilege log and the statements of the individuals she had listed in her original privilege log. As noted in the Magistrate Judge's Order and Recommendation, this order warned the petitioner that "[i]f [she] fail[ed] to appear or to produce the above described documents and privileged document log, **the undersigned will recommend that the within action be dismissed**." The petitioner appeared and produced documents for *in camera* inspection. According to the Magistrate Judge's Report and Recommendation, he was "utterly astounded by plaintiff's submission." According to the Magistrate, the documents provided by the petitioner consisted of "irrelevant notes written on the back of envelopes and scraps of paper." Significantly, the group of documents did not include any records and notes of telephone and other conversations with the individuals listed in the petitioner's initial privilege log.

2. Deposition of Petitioner

The respondents initially noticed the petitioner's deposition for December 21, 1994 at 9:30 a.m. in the offices of their counsel. The deposition was to be recorded both stenographically and by videotape. The petitioner's first attempt

to undermine her deposition occurred on December 9, 1994 when she faxed a letter to the Magistrate Judge "seeking to change the location of the deposition, objecting to the court reporter and seeking permission to tape record her deposition to insure that no changes were made." (Magistrate Judge's Order and Recommendation at page 17) Her objection to the location of the deposition was based on an unfounded paranoia that she would be in some sort of physical danger at the respondents' counsel's office. She also expressed the baseless fears that the court reporter would deliberately misrecord her testimony and that the respondents' counsel would alter or steal her documents. On December 12, 1994, the Magistrate Judge ordered that the deposition go forward as noticed. Thereafter, the petitioner requested that the deposition be postponed as she anticipated that she was becoming ill. As an accommodation to the petitioner, the respondents' counsel offered in writing to reschedule the deposition for January 5-6, 1995. The petitioner agreed in writing to the commencement of her deposition on January 5, 1995.

The petitioner failed to appear for her deposition on January 5, 1995, in violation of the court's December 12, 1994 Order. Thereafter, the petitioner moved to forbid the respondents from moving to compel her deposition because the correspondence rescheduling her deposition pursuant to her request did not re-state the beginning time, location, and the identity of the court reporter. In her motion, the petitioner also attempted to justify her failure to appear for the deposition by stating that she "began to worry that her 'rescheduled' deposition was just a ploy for [respondents' counsel] to contrive an incident where she would be evicted 'by security' from the offices of NPJP." She stated that

> [h]er worry was confirmed by the absence of any written notice: without a notice in hand, at whatever time she would have gone to the offices of NPJP and said "I am here for my deposition", she would have been told to wait for long enough enough [sic] for [respondents' counsel] to "call security" and say to them them [sic]: "There is an Egyptian woman trespassing on our offices. COME AND EJECT HER IMMEDIATELY!!"

She further noted that "'security' could have been instructed to use 'all necessary violence' to eject her." The petitioner's frivolous motion was denied, and the respondents' motion to compel her deposition was granted. Although the respondents' motion for sanctions was denied, the order clearly admonished the petitioner that the court would impose "significant sanctions" if the petitioner failed to appear again or obstructed her deposition.

The petitioner's deposition was next noticed for May 25, 1995. Two days before the deposition was scheduled to begin, the petitioner filed a motion objecting to the location of the deposition and the court reporter, despite the court's May 3, 1995 ruling that the office of the respondents' counsel was an appropriate location and that any court reporter qualified under the Federal and Local Rules could take the deposition. After a hearing which resulted in the imposition of an explicit discovery schedule, the petitioner's deposition was scheduled for the week of June 19, 1995, to be held in the Magistrate Judge's courtroom in the federal courthouse.

The petitioner's deposition consisted of five days of extremely abusive and intolerable conduct directed at the

respondents' counsel. She provided obviously evasive responses to straightforward questions; objected almost constantly to unobjectionable questions; refused to identify documents, claiming that the respondents' counsel may have altered them; consistently arrived late; had frequent emotional outbursts; and repeatedly insulted the respondents' counsel. Screaming "Shut up you bitch!" at one of the respondents' lawyers is but one example of her pattern of outrageous conduct. The extent of the petitioner's abuse during her deposition is indescribable and can only be gleaned by a review of the videotape of the deposition.

3. Contumacious Conduct

The petitioner's appalling conduct permeated every aspect of this litigation. Her behavior in the courthouse caused security concerns on the part of the Office of the United States Marshal and the court, prompting the court to authorize the United States Marshal, and his representatives, to escort the petitioner while she was in the courthouse. The security concerns arose from an episode which occurred in one of the petitioner's previous cases in which she approached Ms. Eslinger, one of the respondents' counsel in the previous case as well as in this action, "in what may reasonably be viewed as a threatening manner, raising her voice and raising both of her arms in front of her body with her fingers drawn up in a fist-like gesture." (November 7, 1995 Order) The courtroom security officer "felt compelled to walk near the participants in an effort to calm the situation." Id. Additionally, the court noted that it had had the opportunity to observe "numerous instances when [the petitioner] has acted in a manner inappropriate for the courthouse and courtroom raising her voice, frequently interrupting the court and opposing counsel, and even insulting opposing counsel in the courtroom." Id.

The petitioner's harassment of the respondents' counsel extended to at least one counsel's family. She contacted Ms. Eslinger's home and asked personal questions of the person who answered the phone, including questions concerning Ms. Eslinger's young child. This intolerable and frightening misconduct led to the issuance of a permanent restraining order on July 5, 1995 which enjoined the petitioner from contacting the home of any lawyer or party to this litigation.

Further, the petitioner generated an onslaught of letters, motions, and memoranda which were filled with abusive comments directed toward the respondents, their counsel, and members of the court. For example, although she insisted on being addressed as "Doctor," she wrote to Ms. Eslinger and Ms. McWilliams and addressed them simply as "Women." Alternatively, she referred to defense counsel by sarcastic titles such as "Empress Eslinger," "Baron Brewer," "old fart," or simply by their last names. On one occasion, the court requested that she address defense counsel as "Mr." or "Mrs." in court, rather than simply using their last names. She refused.

The petitioner's accusations against the respondents, their counsel, and members of the court are both scandalous and countless, not to mention false and wholly speculative. She accused the respondents' counsel of, *inter alia*, racism, advising USC to commit various torts against her so that she would sue USC and USC's general counsel would recommend that they be hired to defend the case, encouraging attorneys in other actions pending in other districts to file frivolous motions to distract her from the various actions pending in this district, lying to the court and encouraging others to do so, etc. She accused Joan Altekruse, one of the respondents in this action, of stealing a baby and pretending it was her own and consistently referred to her in court documents as a lesbian.

The petitioner's vicious attacks extended to members of the court. For example, in an apparent effort to gain the recusal of Judge Anderson,[2] she submitted a letter *in camera* to Judge Anderson in which she accused him of writing "awful" opinions, torturing her, being unfair, possibly having her telephone put under surveillance, holding one of her cases in abeyance to make her "behave" in other cases, and other unethical conduct. She further made mention of "a rumor about [Judge Anderson's] personal life." The petitioner designated that the letter was "[t]o be distributed, if at all, as the Court desires." (September 20, 1996 letter attached to September 25, 1996 Order on Plaintiff's September 20, 1996 *In Camera* Submission)

Her personal attacks against the respondents and their lawyers resulted in a June 11, 1996 Order by Judge Anderson which noted that the court had repeatedly cautioned the petitioner about making unsubstantiated and irrelevant personal attacks. Judge Shedd also noted that "[m]any of Faltas's legal materials contain abusive statements and allegations about

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[2]The petitioner moved repeatedly for the recusal of Judge Anderson, claiming he was prejudiced against her. She also sought the recusal of the Magistrate Judge, a Special Master who was court-appointed to oversee her deposition in the Attorney General case, and United States District Judge Dennis W. Shedd on the same grounds. In addressing "Plaintiff's Third Motion to Recuse," Judge Anderson noted: "As demonstrated by plaintiff's questioning of the special master in a hearing held on June 25, 1996, plaintiff bases her motions for recusal at least in part on her view that the judicial officers must dislike her because of her own instances of offensive behavior."

members of this Court, opposing parties, and opposing counsel" and that the petitioner "is a full-time litigant who uses federal litigation as a means of harassing the (apparently) many persons with whom she has had what she perceives to be negative contact during her stay in this country." (March 19, 1997 Order) As a result of the above-described abuse and the innumerable undescribed acts of misconduct, the court dismissed this lawsuit with prejudice.

B. The Attorney General case

1. Interrogatories and Document Production

The discovery process in this case was essentially a repeat of the abuses the petitioner inflicted in the USC case. The respondents served their first interrogatories between December 7 and December 13, 1995. Despite receiving an extension of time, the petitioner failed to serve any responses to these discovery requests and the respondents moved to compel. Thereafter, the court granted the respondents' motion to compel and ordered the petitioner "to respond fully to each of these defendants[']requests, as worded and numbered by defendants . . ." and sanctioned the petitioner in the amount of $300.00 for discovery abuses. (January 30, 1996 Order on Rule 11 Sanction . . . and Discovery Abuses at page 25) Further, the court provided detailed instructions with regard to discovery. (December 19, 1995 Order on Discovery Procedures; October 11, 1995 Order at 19-20; and January 30, 1996 Order on Rule 11 Sanctions . . . and Discovery Issues)

However, instead of complying with the court's orders, on February 14, 1996, the petitioner served two documents entitled "Plaintiff's Responses to all Defendants' Except Humphries' Interrogatories Part I" and "Plaintiff's Responses to all

Defendants' Except Humphries' Interrogatories Part II." These two documents were in flagrant disregard of the court's prior orders and, while styled as responses to interrogatories, were actually convoluted and nonresponsive replies. Procedurally, the petitioner's responses were a nightmare. For example, Part I began with two pages of objections to the respondents' prefaces and definitions and instructions. The respondents provided specific definitions and instructions in order to ensure that the petitioner was fully and thoroughly informed of the specific information which they were seeking in an attempt to avoid a discovery disaster as had occurred in the USC case. However, the petitioner responded by objecting to the respondents' definitions and instructions and supplying her own definitions for the terms in the interrogatories. For example, she wholly refused to identify documents, refused to identify any corroborating witnesses, and refused to supplement her responses as may become necessary. This was yet another in the petitioner's exhaustive list of attempts to dictate the information which she was willing to provide in discovery.

Moreover, instead of answering each respondent's interrogatories, the petitioner took the liberty of arbitrarily grouping together various respondents' interrogatories and providing one purported response to the same. The petitioner's failure to abide by the court's orders and the Federal Rules of Civil Procedure made her responses virtually impossible to follow and completely useless.

Substantively, the petitioner's responses were often indecipherable and meaningless and essentially provided none of the requested information. For example, she provided a joint response to "Altekruse's, Barresi's, Dark's, Sheridan's, and Weeks' 1 and 2; and Chastain's 2-5, respectively." Her response stated that the witnesses included "all persons with

whom she had RELEVANT contact concerning any defendant(s) and/or who were present during RELEVANT contact she had with any defendant(s)." Not only did the petitioner fail to "identify" said witnesses despite the respondents' clear definition of the word "identify," she failed to even provide a single witness's name. Further, she responded that "[t]he matters known to these witnesses are the substance of the contacts." Further, she responded that "[w]hether any statement was taken from them or not is privileged work product." The petitioner knew that whether any statement was taken from such a witness is a standard and proper interrogatory question and is not privileged, as such information was provided to her in Judge McCrorey's May 3, 1995 Order in the USC case at page 2.

Further, the petitioner frequently responded to various interrogatories simply by stating that the documents would be produced, apparently attempting to rely on FED. R. CIV. P. 33(d). This was in blatant disregard of the court's admonition in its December 19, 1995 Order that "[a]ny party seeking to respond by referring to Rule 33(d) is, however, required to strictly comply with the requirement that the document be specified 'in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.'" In fact, the petitioner did not describe the documents in any detail and, in most cases, simply stated that the documents would be produced.

In several responses, the petitioner demanded that the respondents pay her an expert fee before she would answer the interrogatories. In other responses, she provided rude, irrelevant, gratuitous comments. For example, her response to Alteku use's twentieth and twenty-third interrogatories begins:

"Only an idiot would deny that when someone has an employment contract with an entity . . . ." The last sentence of her response to Barresi's tenth interrogatory states: "Only an idiot expects the State of South Carolina to hire people to put lies on state government letter head." These examples of the petitioner's purported responses are not only blatantly improper, but they flaunt the court's January 30, 1996 Order which "assure[d] the parties that unnecessary sarcasm, aspersions or negative personal comments are counter-productive . . . ." (January 30, 1996 Order at pages 9-10) Significantly, these responses were filed[3] during the time in which the court was considering whether to adopt the Magistrate Judge McCrorey's Report and Recommendation in the USC case, which recommended dismissal of the petitioner's case for discovery abuse.

Although it is impossible to address every inadequacy in the petitioner's responses, the flagrancy and intentional deficiencies of the responses are apparent upon a reading of the same. These responses prompted Judge Anderson's February 21, 1996 *Sua Sponte* Order Compelling Discovery which noted:

> Unfortunately, even a cursory review of plaintiff's responses to the present interrogatories reveals that she has taken no heed either of this court's repeated instructions as to discovery generally or the severe sanction recommended in the prior action for discovery abuse. Plaintiff's answers are often entirely evasive or nonresponsive. After reviewing

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[3]These responses were provided to the district court as required by prior orders on discovery procedures.

> these responses, the court is left with the unmistakable impression that plaintiff intends to avoid providing any meaningful discovery in response to these interrogatories.

(February 21, 1996 Order at page 2) The court yet again warned her that "the court has available sanctions including striking specific allegations, individual claims, or the entire complaint, if it finds that plaintiff is evading reasonable discovery." (February 21, 1996 Order at page 13) Further, the court sanctioned the petitioner in the amount of $500.00, as her responses were "facially inadequate" and the court had "previously instructed [her] to fully respond to these interrogatories after finding [her] earlier objections to be frivolous and an inappropriate attempt to delay discovery." (February 21, 1996 Order at page 14)

The court directed the petitioner to amend her discovery responses in accordance with the order by March 8, 1996 and noted that the respondents were entitled to the production of documents referenced in the responses as soon as a reasonable time could be arranged. The petitioner never complied with the court's requirement that she properly supplement her interrogatory responses. Accordingly, the respondents were compelled to proceed with her deposition without the benefit of appropriate interrogatory responses, although the court did impose certain sanctions in the form of limiting the petitioner's reliance on matters and witnesses not previously fully disclosed. (May 15, 1996 Order)

On March 19, 1996, the court ordered the petitioner to complete production[4] of those documents which she had elected to produce in response to interrogatories as allowed by FED. R. CIV. P. 33(d) and expressly reminded the petitioner that she must produce the documents "marked as indicated in her interrogatory responses." The court's February 21, 1996 *Sua Sponte* Order Compelling Discovery expressly required immediate production of any documents relied on in response to interrogatories, and the petitioner had failed to comply as of March 19, 1996. Although the court had previously ordered her to "produce *all* responsive documents, marked as indicated in her interrogatory responses, on March 21, 1996 . . . ," (March 19, 1996 Order Granting Defendants' Motion to Compel Production at page 3), she continued her pattern of defiance of the court's discovery orders. The documents she produced were not marked in any fashion. The petitioner merely placed "cover-sheets" on top of stacks of documents, which indicated to which interrogatories said documents purported to respond. However, although the respondents' counsel spent several hours attempting to review said documents in an effort to determine what evidence she claimed supported her various allegations, said attempt proved to be futile.

The futility of said task was due to several factors. First, the documents themselves bore no markings, which was in direct defiance of the court's December 19, 1995 Order on Discovery Procedures (at page 4) as well as the March 19, 1996 Order Granting Defendants' Motion to Compel Production (at page 3). The respondents were therefore forced to label the documents in order to reference them in a motion for sanctions.

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[4]The petitioner had previously produced only a selective group of documents.

Second, the documents were not arranged sequentially following the natural sequence of those interrogatories she chose to answer by reliance on FED. R. CIV. P. 33(d). Third, the documents were not even separated out as to respondent. For example, one of her "cover sheets" purported that the documents to follow were responsive to interrogatories propounded by five different respondents. Further, there were two "cover sheets" which purported that the "entire production is conceivably responsive" (emphasis added) in some way to the interrogatories listed on the "cover sheets."

Another point of confusion was the placement of the paper-clips on several documents. At the document production, counsel for the respondents asked the petitioner if all of the documents following one "cover-sheet" were responsive to the interrogatories identified on said "cover-sheet" until another "cover-sheet" appeared in the stack of documents. She stated that this was incorrect and offered to "paper-clip" the documents to the "cover-sheet" to which they were responsive. She did "paper-clip" some documents, but there were numerous "loose" documents remaining. It was impossible for the respondents' counsel to decipher to which interrogatories the petitioner alleged that these "loose" documents were responsive. In essence, the respondents were unable to extract any meaningful information whatsoever due to the illogical and unorganized fashion in which these documents were produced.

At the hearing on the respondents' motion for sanctions for, *inter alia*, the petitioner's failure to specify which documents were responsive to which interrogatories, the petitioner indicated that she would correct this problem by providing a log. The court ordered her to provide such a log within ten calendar days or by May 2, 1996. (April 22, 1996 Order) She again flaunted the court's order. The log she

eventually produced on May 10, 1996, the Friday before her deposition was to begin, did not comply with the court's orders and was basically indecipherable. She attempted to justify the form of the log in a teleconference held on that issue by arguing that the respondents could get the information they needed from her in her deposition. As noted in the July 19, 1996 Order Re Motions for Dismissal, the petitioner's "delay and failure to produce the log in a more readable manner prior to her deposition clearly prejudiced defendants in their ability to prepare for plaintiff's deposition as well as in the significant added expense of covering the same matter in plaintiff's deposition." (July 19, 1996 Order at page 11)

2. Deposition of Petitioner

Prior to the petitioner's deposition, the respondents' counsel requested that the deposition be taken in the courthouse and that a judicial officer be appointed to preside over it. This request was based on prior experience with the petitioner, particularly throughout her deposition in the USC case. The petitioner sought to choose the court reporter, to impose a time limit on the deposition, and to preclude videotaping of the deposition. As noted in the July 19, 1996 Order Re Motions for Dismissal, the court resolved the dispute by: (1) allowing the choice of two neutral locations other than the courthouse; (2) requiring the respondents to accommodate the petitioner's request for handicapped parking; (3) setting a daily time limit on actual questioning; (4) allowing the respondents to videotape the deposition; and (5) making itself available by phone to resolve disputes as they arose.

The deposition began with the petitioner refusing to face the video camera, thus necessitating the court's involvement at the onset. The remainder of the deposition consisted of her

subjecting the respondents' counsel, and eventually the special master, to extremely abusive and intolerable conduct. She provided obviously evasive responses to straightforward questions; objected almost constantly to unobjectionable questions; refused to identify documents, claiming that the respondents' counsel may have altered them; consistently arrived late; had frequent emotional outbursts; and repeatedly insulted the respondents' counsel. By the end of the second day, the respondents had moved to have a judicial officer appointed to preside over the deposition, and the petitioner had moved to terminate the deposition. After viewing a videotape from the deposition, the court appointed a practicing attorney to preside over the deposition as special master. However, the presence of the special master failed to curtail the petitioner's abuse. As noted in the July 19, 1996 Order Re Motions for Dismissal,

> A review of the videotapes reveals that despite the special master's presence, [the petitioner] continued her pattern of evasion and utterly inappropriate outbursts. The outbursts led to several instances in which plaintiff pulled off her lapel microphone and slammed it on the table. This pattern of behavior led the videographer to ask to tape the microphone to the table to avoid destruction of the microphone.

(July 19, 1996 Order at page 16) At one point in the deposition, the petitioner's misconduct was so extreme that the special master deemed it to be "physically threatening." (Report of the Special Master at page 4) The extent of the petitioner's abuse during her deposition is indescribable and can only be gleaned by a review of the videotape of the deposition. However, a

review of the May 22, 1996 Report of the Special Master summarizes her extremely contumacious conduct.

The petitioner unilaterally ended her deposition on May 21, 1996 by failing to return after a break in direct defiance of the special master's instructions. The special master had specifically stated on the record that the deposition would reconvene after the break, yet the petitioner failed to return. Thereafter, the respondents' counsel notified the petitioner that the deposition would then reconvene at 9:00 the next morning, but she once again failed to appear. The petitioner filed a motion which appeared to argue that she was sick and unable to continue her deposition. As noted in the July 19, 1996 Order at page 17, "[t]he only illness specifically referenced in the written motion is [her] long standing partial vocal cord paralysis. Nonetheless, [the petitioner] was willing to continue the deposition by phone from her home." Subsequently, the petitioner argued that she had informed the special master that she was ill and unable to continue, but the videotape and back up audiotapes failed to support this contention. Moreover, the petitioner's conduct at the June 25, 1996 hearing, which was scheduled to consider her various failures to timely return to her deposition after breaks, was most telling. Astonishingly, she failed to timely return from a break in the hearing, and the hearing had to be completed in her absence.

Thereafter, the petitioner's action was dismissed with prejudice as a result of her wilful and egregious pattern of evading discovery; her outrageous misconduct throughout the discovery process and, specifically, during her deposition; her

failure and refusal to comply with court orders; and her general abuse of the judicial system.[5]

ARGUMENT

The Fourth Circuit Court of Appeals correctly concluded that the petitioner's utter failure and refusal to comply with court orders and her flagrant abuse of the discovery process fully warranted the sanction of dismissal in the USC and Attorney General cases.

The Fourth Circuit has adopted a four factor test to determine when dismissal is an appropriate sanction. The four factors to be considered by the court are: (a) whether the noncomplying party acted in bad faith; (b) the amount of prejudice noncompliance caused the adversary, which necessarily includes an inquiry into the materiality of the evidence not produced; (c) the need for deterrence of the particular sort of noncompliance; and (d) the effectiveness of less drastic sanctions. Mutual Fed. Sav. & Loan Ass'n v. Richards & Associates, 872 F.2d 88, 92 (4th Cir. 1989).

A. Bad Faith

As stated in Judge McCrorey's July 19, 1995 Order and Recommendation, "the conclusion that [the petitioner] has acted in bad faith is inescapable." The petitioner is an atypical *pro se* litigant in that she is very experienced in the

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[5]Judge Anderson's July 19, 1996 Order Re Motions for Dismissal provides a detailed analysis of what the court considered in deciding to dismiss the petitioner's case and the sequence of events which led to the dismissal.

litigation process. As noted in Judge Anderson's March 18, 1996 Order Dismissing Action with Prejudice in the USC case,[6] the petitioner has an understanding of the law and has been involved in at least seven cases in this district and as many as twenty-one nationwide. Her experience with and knowledge of the law, as well as the nature of the abusive tactics she pursued inexorably in this litigation, make it obvious that her behavior in obstructing the discovery process was intentional. As noted in Judge Anderson's July 19, 1996 Order at page 6, the petitioner's "litigation history, considerable intelligence and demonstrated legal ability" compel the conclusion that her "behavior was not caused by ignorance of the proper standards but was a matter of bad faith."

Further, the petitioner's actions of, *inter alia*, refusing to respond to discovery, providing evasive answers to discovery, shouting insults at the respondents' counsel and the special master, failing to appear for her deposition, refusing to answer questions in her depositions, providing wholly evasive answers in her depositions, engaging in behavior during her deposition which the special master found to be "physically threatening," failing to return after a break in her deposition, failing to provide an adequate log which would enable the

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[6]In his July 19, 1996 Order Re Motions for Dismissal in the Attorney General case, Judge Anderson noted that, as there are certain common issues in the dismissal of the USC and Attorney General cases, particularly with regard to the bad faith and "less drastic sanction" factors, he would rely on and incorporate certain findings from the dismissal order in the USC case into the July 19, 1996 dismissal order in the Attorney General case.

respondents' counsel to decipher her eventual document production, claiming that her responsive documents were "massive" and required "earth moving equipment" to transport them, when in fact the documents numbered merely 713 pages, failing to produce a sufficient privilege log, failing to appear in court due to "illness," when she had been at the respondents' counsel's offices on the same day, and refusing to comply with numerous court orders, exemplify bad faith.

B. Prejudice

The respondents were severely prejudiced by the petitioner's misconduct in that they were deprived of an opportunity to prepare a defense and subjected to significant and unnecessary expenses. The petitioner succeeded in providing the respondents with essentially no meaningful discovery while at the same time significantly driving up defense costs through her dilatory and abusive conduct. The petitioner's persistent reluctance to adequately respond to discovery requests, including interrogatories, requests for production, and deposition questions, necessitated numerous costly motions to compel and for sanctions as well as a succession of hearings. Despite the unprecedented degree of guidance provided by the court and the considerable efforts of the respondents' counsel, the petitioner delayed discovery until the original discovery deadline expired, was extended, and elapsed again. As the Magistrate Judge concluded in the USC case, it became evident that "no direct answers to the most basic of inquiries would ever be forthcoming." (March 18, 1996 Order Dismissing Action with Prejudice at page 22) Accordingly, the prejudice the respondents suffered is apparent.

C. Deterrence

The need for deterrence of the particular sort of noncompliance as occurred in the USC and Attorney General cases is clear. The petitioner is a prolific litigant, and her flagrant, inexorable abuses threaten the very integrity of the judicial system. Her misconduct in the Attorney General case, which occurred subsequent to the USC case, clearly established that only the most severe sanction was likely to have any effect. Further, the petitioner has been sanctioned in prior litigation, and clearly such sanctions failed to deter the abominable conduct she demonstrated in these lawsuits.[7]

D. Lesser Sanctions

In his March 18, 1996 Order Dismissing Action with Prejudice in the USC case, Judge Anderson sets forth numerous reasons as to why a sanction other than dismissal

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[7]In one of the cases in which the petitioner was sanctioned over three thousand dollars, the court stated: "Assa'ad [Faltas] has seriously abused the federal discovery rules and the processes of this Court. Assa'ad [Faltas] has imposed unjustified burdens upon the respondents and the Court. The Court, having for many months and on many matters given special consideration to the plaintiff's *pro se* status, having attempted to assist the plaintiff on repeated occasions, and having held the plaintiff to a far less stringent standard than attorneys, can no longer save the plaintiff from the expensive consequences of her own actions and abuses." (May 11, 1989 Order in Marie T. Assa'ad v. John Umstead Hospital, *et al.*, C-87-465-D, United States District Court for the Middle District of North Carolina, Durham Division).

with prejudice would be ineffective in this case. For example, with regard to monetary sanctions, previous such sanctions have failed to have any effect on the petitioner's conduct and she is unlikely to satisfy any monetary sanction. (She has failed to satisfy monetary sanctions issued in the USC and Attorney General cases,[8] including sanctions for Rule 11 violations and discovery abuses,[9] she filed three of her actions in the United States District Court for the District of South Carolina *in forma pauperis*, and she has often described herself as impecunious).

Judge Anderson further sufficiently and succinctly explains why lesser sanctions in the form of (1) an offset of any judgment she might receive, (2) issue preclusion, and (3) limiting the petitioner to trial against one or more respondents with evidence limited to those witnesses and documents as to which the court is satisfied that she gave adequate discovery in a timely manner would be ineffective. (See Judge

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[8]Although prior monetary sanctions related to the discovery process were subsumed into the order dismissing the Attorney General action, these monetary sanctions remained unpaid at the time of the July 19, 1996 Order.

[9]The Rule 11 sanctions remain in effect and have yet to be satisfied by the petitioner. The issuance of these sanctions was properly affirmed by the Fourth Circuit and the reasons for the grant of such sanctions are clearly set forth in Judge Anderson's November 20, 1995 Order Granting Rule 11 Sanctions and his January 30, 1996 Order on Rule 11 Sanctions, Motion to Strike, Manner of Service, and Discovery Issues.

Anderson's March 18, 1996 Order Dismissing Action with Prejudice at pages 23-24).

Moreover, the petitioner's misconduct during discovery in the Attorney General case is very similar to the misbehavior which led to the dismissal of the USC case. Virtually all of the discovery in the Attorney General case occurred **after** the Magistrate had recommended dismissal of the USC case, and much of it occurred after the court dismissed the USC case by Order dated March 18, 1996. Accordingly, despite the petitioner's awareness of the consequences of her abuse, the pendency of the Recommendation and Order of Dismissal in the USC case failed to deter similar behavior. It is clear that lesser sanctions will not suffice.[10]

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

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[10]Additionally, the Fourth Circuit properly affirmed Judge Anderson's denial of the petitioner's motions for reconsideration of the dismissal orders in both the USC and the Attorney General cases. Judge Anderson set forth his reasons for the denial of the same in his July 11, 1996 Order on Plaintiff's Motion for Reconsideration in the USC case and in his August 16, 1996 Substituted Order Denying Plaintiff's Motion to Alter or Amend in the Attorney General case.

Respectfully submitted,

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APPENDIX

APPENDIX

FILED
JULY 11 1996

LARRY W. PROPES, CLERK
Columbia, S.C.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Soraya F. Fares and Marie-Therese Assa'ad-Faltas, MD, MPH [HEREINAFTER "Dr. Faltas"] on behalf of themselves and classes they represent,	) C/A No.: 3:94-1578-17
Plaintiffs,	)
The University of South Carolina [hereinafter "USC"] et al.,	)
Defendants.	)

ORDER ON PLAINTIFF'S MOTION FOR RECONSIDERATION

This matter is before the court on plaintiff's motion for reconsideration of this court's order dismissing the present action. That order adopted the Magistrate Judge's recommendation that this action be dismissed for abuse of the discovery process and willful misrepresentations to the court. *See* Order filed March 18, 1996 ("Order of Dismissal"); Motion filed April 8, 1996.

The court has received and fully considered plaintiff's various briefings in support of her motion for reconsideration,[1] as well as defendant's memorandum in opposition (filed May

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[1]Plaintiff has filed the following documents which address the present motion: **(1)** "Dr. Faltas' Rule 59(e) Motion and Preliminary Brief to Alter Judgment" (filed April 8, 1996 -- 7 pages plus attachments); **(2)** "Dr. Faltas' Errata to her Rule 59(e) Motion" (filed April 9, 1996 -- 2 pages plus attachments): **(3)** "Dr. Faltas' Supplemental Briefs in Support of her Rule 59(e) Motion [;] First Supplemental Brief: Summary of Supplemental Arguments and Motion to Supplement the Record of this Case" (filed May 2, 1996 -- 3 pages plus attachments); **(4)** "Dr. Faltas' Supplemental Briefs in Support of her Rule 59(e) Motion [;] Second Supplemental Brief: On Wit Culture and Courage" (filed May 2, 1996 -- 3 pages plus attachments); **(5)** "Dr. Faltas' Reply to Defendants' Opposition to her Rule 59(e) Motion (Part I)" (filed June 3, 1996 -- 2 pages); and **(6)** "Dr. Faltas' Motion for an Extension for her to File Part II of her Reply to Defense's Opposition to her Rule 59(e) Motion" filed June 3, 1996 -- 1 page). The court denied plaintiff a further extension to file this "Part II" of her reply, based on the many extensions previously granted and the court's determination that the matters sought to be briefed were not relevant to the present determination. *See* Order Denying Extension of Time filed June 11, 1996. *See also* "Plaintiff's Motion for a Third Brief Extension of Time to Submit a More Detailed Brief . . . " (filed April 29, 1996, and granted April 30, 1996). Plaintiff's thereafter filed a document entitled "Supplement to Plaintiff's Response to Rule 33 Interrogatories" (filed June 17, 1996) which the court has also considered in resolving plaintiff's present motion.

29, 1996). For the reasons stated below, the court has determined that its prior order should not be modified except as to the relatively minor matters set forth below under the heading "Modifications and Supplementation."

DISCUSSION

The court will not attempt to address each of plaintiff's arguments, as most have previously been addressed by the court in its earlier order. Several, however, deserve comment.

Plaintiff's Pattern of Behavior

Throughout her motion for reconsideration, plaintiff takes isolated comments by the court out of context and implies that the court's decision to impose the sanction of dismissal was based on a few isolated incidents. The reverse is true.

The record clearly demonstrates that plaintiff engaged in a pattern of behavior calculated to avoid any meaningful discovery. While constantly complaining about the expense to the taxpayer of defending the present and other cases, plaintiff has done everything in her power to drive up the costs of litigation. She avoided or substantially delayed providing answers to interrogatories and documents responsive to requests for production, ultimately arguing that the defendants could get the information in her deposition. In her deposition, however, plaintiff continued to engage in a pattern of providing largely evasive or nonresponsive answers. Plaintiff persisted in this pattern despite judicial supervision. It was the totality of this pattern of behavior (which became particularly apparent at the close of discovery), coupled with misrepresentations to the court (particularly regarding documentary support for her claims which also became apparent at the close of discovery),

which led the magistrate to recommend the present sanction and this court to adopt it.[2]

The impact of plaintiff's pattern of delay and evasion of discovery is demonstrated by one of plaintiff's present arguments. Plaintiff argues that even if defendants' had obtained her younger sister's name and address in plaintiff's deposition, it would have done them no good as the time for discovery was over as of that time and as she would have instructed her family members not to speak with defense

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[2]In regard to documents, plaintiff suggests that the court is punishing her for not properly calculating the number of documents during a hearing (regarding the number of unprivileged documents ultimately produced) or for not keeping better notes (regarding the documents as to which plaintiff claimed a privilege and which were provided to the court for *in camera* review). Again, this mischaracterizes the record. Plaintiff had effectively delayed discovery and caused the magistrate to make numerous accommodations to facilitate plaintiff's repeated claims of "massive" documents in support of her claim. When the day came for that production and defendants sent a courier to plaintiff's home, plaintiff refused to comply, suddenly claiming only a relatively few documents existed. Similarly, in regard to the privileged documents, plaintiff had been repeatedly asked to complete a proper privilege log. The proffered logs repeatedly failed to comply with the magistrate's order and plaintiff repeatedly delayed production for *in camera* review. The documents ultimately provided to the court demonstrated the totally disingenuous nature of plaintiff's prior representations of the nature of the documents and the burden in assembling them.

counsel. *See* Plaintiff's April 9, 1996 memorandum at 1. This type comment only confirms the court's conclusion that plaintiff's pattern of behavior was not a matter of misunderstanding the system, but a deliberate attempt to manipulate it.

The frequency with which and degree to which plaintiff violated the clear intent of the Magistrate Judge's various orders leaves this court with the firm conviction that plaintiff's behavior was not only deliberate and egregious, but deserving of the very severe sanction imposed by this court. As noted in the Magistrate Judge's Report and Recommendation and this court's Order of Dismissal, there are instances in which the court's mandate could not have been clearer yet plaintiff violated the order. One example is found in plaintiff's failure to produce documents to defendants when the court set a specific date for production and required defendants to make numerous accommodations to plaintiff to facilitate the production (including sending a courier to her home to help with the supposedly massive documents).

Far more numerous, however, are instances in which plaintiff clearly evaded the spirit and intent of the Magistrate Judge's orders, complying only with portions of the form and none of the substance. Plaintiff apparently believed that by doing so she placed herself in a position to argue that she had simply misunderstood the process or had some other excuse for her failure to comply. Her supplemental interrogatory responses which add only minimal information to patently defective responses after a court order for supplementation are examples of this behavior.

Had such behavior occurred once, or even a few times, this court might not have seen it as a deliberate pattern of behavior.

The frequency of these forms of noncompliance, however, along with the degree of the noncompliance convince this court that plaintiff's behavior was a deliberate attempt to evade the discovery process and the authority of the court.

Prejudice to Defendants

Plaintiff also argues that the court has failed to make an adequate finding that the defendants have been sufficiently prejudiced by her actions to justify dismissal. Plaintiff bases this argument in part on a claim that the court failed to address the materiality of the information not provided.

Central to plaintiff's argument is her belief that the defendants know what they have done to her so they cannot be prejudiced by her failure to tell them what they already know. If the strength of a plaintiff's belief in her case were determinative, few defendants would be entitled to discovery. This is simply not the standard.

Plaintiff also seems to believe that the only way to find sufficient prejudice exists is to first rule out the possibility that the court might use other means to remedy or reduce the prejudice. In other words, if the court might resolve the prejudice by extending discovery and minutely managing it, then the "prejudice" evaporates. While a court must take such matters into consideration in deciding the appropriate sanction, this does not mean that no prejudice exists. In other words, prejudice is not eliminated just because the court might find some means of minimizing it.

While plaintiff's argument might be availing to reduce the sanction in some cases, the particular circumstances of the present case demonstrate why this is not appropriate. In the

present case, the court had already extended and micro managed discovery. Despite this, plaintiff's pattern continued. As a result, the costs to defendants were increased dramatically and a wholly unreasonable burden was imposed on the court. Given her financial status, there is no way for the court to shift these costs back to plaintiff except through offset against any possible recovery. This results in a no real downside for plaintiff. What plaintiff suggests then, would allow her to effectively evade punishment for her behavior while imposing a mounting burden on the defense and the court.

In any case, the court found prejudice to defendants based, *inter alia*, on the fact that plaintiff claimed to know of a variety of witnesses yet failed to fairly or timely identify these persons. The court cannot know what, if any, testimony these witnesses may have offered. It might support plaintiff, or might include information or admissions helpful to defendants. Having only partially identified these various witnesses, plaintiff should not be allowed to rely on her own failure to further identify them as a basis for claiming lack of showing of materiality.

Also in regard to the witness issue, plaintiff incorrectly focuses on the single question of whether she identified one or both sisters as possible consulting physicians. This takes the court's reference to the sisters totally out of context. The court's comment was directed at plaintiff's pattern of distorting the record. Whether plaintiff had stated that she had consulted one or both sisters, and whether defendants might reasonably inquire about both (even if plaintiff had only named one) is, at most, a collateral point.[3]

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[3]In oral argument to this court, plaintiff indicated defendants were unreasonably inquiring into plaintiff's

Quite plainly, plaintiff has evaded providing adequate and timely responses as to numerous potential and named witnesses. *See* Order filed March 18, 1996 at 21-22. This is not her only failure to properly comply with discovery orders, merely an example of plaintiff's evasive behavior.

To require the court to make any more detailed finding as to prejudice, that is, to identify what the defendants do not know, is in essence to require the court to prove a negative. Plaintiff has alleged very broad claims against a number of defendants. These defendants have been unsuccessful in pinning down plaintiff's version of events, even after a five day deposition. It would be highly prejudicial to require them to go to trial still so unclear as to the basis of plaintiff's claims. While, as noted above, the court might minimize this prejudice to some degree by more judicial micro management of further extended discovery, this would impose another set of burdens on both defendants and the court. This should not be required under the circumstances of this case.

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personal family history. This was a distortion of the record which revealed that in addition to the normal reasons an opposing party might inquire as to the names and addresses of family members, plaintiff had claimed to have consulted one or more of her sisters in regard to her medical condition. Plaintiff had no other treating physician other than herself and had placed her medical condition in issue. While parts of the record may be susceptible to a reading that plaintiff consulted only one sister, the record also reveals that both sisters are physicians and the record is certainly not so clear as to rule out consultation with both. *See generally* Order of Dismissal at 11 and at Appendix A.

Litigation History

Plaintiff also suggests that the court has taken her litigation history into consideration as a reason to impose punishment. As the court carefully pointed out in its order of dismissal, plaintiff's litigation history has been considered for two very limited purposes. Order of Dismissal at 2 n. 1. First, the court looked to plaintiff's extensive litigation history in determining that she was not a novice in the discovery or litigation process. Second, the court considered plaintiff's litigation history, and the likelihood that she would continue to be a litigant, in determining the need to deter similar unacceptable conduct. The court sees no reason to modify these findings.

MODIFICATIONS AND SUPPLEMENTATION OF ORDER OF DISMISSAL

Correction of Litigation History

In her Supplement to her Rule 33 responses (filed June 17, 1996), plaintiff brings to the court's attention an omission from the court's recitation of plaintiff's litigation history. That is, the history fails to include a matter captioned *Fares and Assa'ad v. Whitney and Liberty Mutual Insurance Company*. This matter involved a motor vehicle accident and was, apparently resolved by arbitration. The documents provided to the court indicate that the arbitrator found for Dr. Faltas (Assa'ad) or her mother (Fares) in regard to the property damage claim but against Dr. Faltas as to any emotional distress claims. It is unclear from plaintiff's submission whether this was simply an insurance dispute sent to arbitration or whether it was, at some point, a matter pending in a court. The documents indicate only that the arbitration was conducted in "Wake County Courthouse" and had a Docket number "A077/00012/88." *See* Supplement to

Plaintiff's Response to Rule 33 Interrogatories (filed June 17, 1996).

Based on the receipt of this information from plaintiff, the court hereby amends its prior reference to plaintiff's litigation history found at pages five through six (note 2) in the Order of Dismissal, to include the above referenced matter. Given the reason for the court's discussion of plaintiff's litigation history, this addition requires no further modification of the original order.

Supplementation of Record

Plaintiff also asks the court to supplement the record to include two letters which were previously submitted to this court for *in camera* review.[4] These include: A January 4, 1994 letter from Walter Parham to Edward Turbeville; and an October 27, 1993 letter from Victoria Eslinger to a representative of the University of South Carolina. The court finds this request to be reasonable and, therefore, will require defendants to submit these documents, under seal, for whatever future review of may be had.

CONCLUSION

For the reasons stated herein, plaintiff's motion for reconsideration is denied except to the extent that the court

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[4]This court recalls that these letters were submitted for review in a related case, not the present case. Nonetheless, the court will direct that they be made part of the record in the present case, to be filed and maintained under seal absent further order of this court.

amends its recitation of plaintiff's litigation history to include the matter listed above and directs defendants to file, under seal, the two letters referenced above. This matter is, therefore, dismissed with prejudice for the reasons stated in the court's order of March 18, 1996 as further explained above.

IT IS SO ORDERED.

/s/_____
Joseph F. Anderson, Jr.
United States District Judge

July 11, 1996
Columbia, South Carolina

FILED **LARRY W. PROPES, CLERK**
AUGUST 16 1996 **Columbia, S.C.**

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Marie-Therese Assa'ad-Faltas, MD, MPH Plaintiff, The Attorney General of Virginia for the Commonwealth of Virginia, and Carol Nance, in both her individual and official capacities; Bobby Gist, David Sheridan, Patrick Barrissi, Judy Weeks, J. O'Neil Humphries, Laurence Dark, Joan Altekruse, Ernest Altekruse, Richard Creswick, and Randall Chastain, in their individual capacities, The Law Firm of Nexsen, Pruet, Jacobs & Pollard [hereinafter NPJP], in its corporate capacity, and Victoria Eslinger, Susan McWilliams, John Trussell, and Edward Turbeville, in their individual capacities; The State Newspaper in its corporate capacity, Katherine Gray, Claudia Smith Brinson, Patrick Blanchat, Thomas McLean, and William Rhone, individually and as agent of The	C/A No.: 3:95-1521-17

State Newspaper; and Chris Riley and other unknown-named persons,

Defendants.

**SUBSTITUTED*
ORDER DENYING PLAINTIFF'S
MOTION TO ALTER OR AMEND**

*Due to printer error, the original order dropped several lines. This order is substituted.

Presently before the court is plaintiff's motion to alter or amend the judgment in this case. Underlying this motion is a request that the court reverse its earlier orders dismissing various defendants and claims, reverse its award of sanctions, and reverse its dismissal on grounds of discovery abuse. Also before the court are a variety of related motions or submissions. For the reasons discussed below, the court denies plaintiff's motion to alter and amend. The remaining procedural motions are mooted.[1]

Although it forms no part of the reason for denial of the motion for reconsideration, the court will also address plaintiff's manner of submission of the present motion. The court does so in hopes that this discussion will guide plaintiff in any future filings in this or any related matter.

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[1]The court had neared completion of this order prior to receipt of defendants' memorandum in opposition. The court has, however, reviewed the defendants' brief and sees no further matters that need be addressed.

Manner of filing documents

It is strongly the court's preference (if not the requirement of the Local Rules) to receive a single memorandum in support of a given motion, even if filed on the last day of the allowable period. This means one entry for the Clerk of Court's office, and only one initial memorandum for the court to match up with whatever responsive memorandum may be received. A single unified filing also reduces the handling of paperwork and clarifies the time for response.[2]

Despite this court's numerous prior indications to plaintiff that her practice of filing numerous documents (in situations similar to the present) places an unnecessary burden on the court, she has filed ten (10) separate documents as initial support or otherwise related to her present motion to alter or amend. Many of these documents have been filed on the same dates, making reference even more complex.[3]

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[2]The confusion this can cause is demonstrated by plaintiff's present multi part filing. For instance, while plaintiff indicated an intent to file a Part I-C, none of the documents is so labeled. There is, however, a document with no "Part" designation. Similarly, there are two documents labeled "Part II." Plaintiff has since indicated one is really "Part III," but the court cannot tell which one. Not only is this confusing for the court but it would be for the responding defendants.

[3]Without reiterating the generally lengthy titles of these various documents, they consist generally of the following: Parts I-a and I-b of the motion to reconsider (both filed July 29, 1996); Part I-d (filed August 6); two documents labeled

In case it has not been clear to plaintiff before, this court will reiterate that it will not tolerate this or similar practices. Absent extraordinary circumstances, plaintiff may file one memorandum in support of any given motion. She may likewise file, at most, one memorandum in reply absent extraordinary circumstances. In the future, this court may well refuse to consider any but the first document so filed in this or any other matter. *See generally* Fed. R. Civ. P. 12(g) (requiring that certain motions raised before answering or combined with the answer be consolidated in a single filing); Local Rule 12.04 (referring to "*an* accompanying memorandum" for motions); Local Rule 12.07 (discouraging replies and limiting them to new matters raised by the opposition).

Part II (both filed August 2, 1996 -- one of which plaintiff later indicated was Part III, without indicating which document that would be); and what may be Part I-C (though not so labeled) relating to the application of Fed. R. Civ. P. 11(c)(1)(A) (filed August 6). Thus, the court has six (6) separate documents from plaintiff dealing with the substance of the motion, even before any reply which she might file to any opposing memoranda. In addition, the court has received four (4) other documents (one on July 29, two on August 2, and one on August 6) variously: warning the court of plaintiff's intent to file multiple subparts while imploring the court not to consider any portion until all are received or the time for filing expires; a prayer for a hearing or "particularly serious consideration" of the motions for reconsideration of the sanctions and costs previously imposed; and correcting the title of an earlier motion. Further, two of the later four are labeled or appear to be intended as separate motions which creates even more confusions and unnecessary burden on the court.

In the present case, despite the fact that plaintiff has unreasonably burdened the court by her manner of filing, the court has considered each and every document the plaintiff has filed. This makes moot that motion filed July 29, 1996 which is captioned "Plaintiff's Motion for the Court to not Consider Parts I-a, b of her Rule 59(e) Motion, Until All its Parts Are Filed or Until the Time for Such Filing Expires." The court has, further, seriously considered the present motion for reconsideration but sees no reason for any further hearings. Therefore, to the extent it might be considered a separate motion, "Plaintiff's Prayer for a Hearing on, . . . Her Rule 59(e) Motion on the Rule 11 Sanctions and for Relief from Taxation of any Costs to Her" is also now moot. Motion filed August 2, 1996.

The substantive portions of plaintiff's motion for reconsideration are discussed below. The court will address these by general subject matter.

I. DISMISSAL BASED ON PLAINTIFF'S ABUSE OF DISCOVERY PROCESS

A. Materiality of information not discovered

In Part I-a of plaintiff's motion, she challenges the court's July 23, 1996 order which dismissed whatever remained of the present action. This dismissal was based on plaintiff's abuse of the discovery process. Very little of this argument requires any response whatsoever as plaintiff is merely rearguing points addressed by the court in its earlier order. The court will, however, take this opportunity to clarify a few points plaintiff clearly misunderstands or misstates.

First, plaintiff states that the court rejected Rule 12(b)(6) motions in this case and implies that this was the sole proper means for defendants to pin down the basis of plaintiff's many broad allegations. Factually, this statement is only partially correct. As to the remaining claims against the remaining defendants, this court either rejected Rule 12(b)(6) motions or none were made. Numerous other parties and claims were, however, dismissed under Rule 12(b)(6).

Similarly, plaintiff's legal argument is frivolous. Discovery is often necessary to pin down the factual basis of claims under the liberal pleading provisions of the Federal Rules of Civil Procedure.

The remaining arguments seem primarily to argue the merits of plaintiff's various claims, apparently in an attempt to demonstrate that defendants were not prejudiced because they were not denied discovery which was necessary to their defense. Plaintiff misconstrues the law in these arguments.

For example, plaintiff refers to certain statements allegedly made by defendants which she claims were defamatory *per se* in that they alleged mental illness or professional incompetency. She then argues that no discovery was necessary as to these claims because defendants must defend themselves solely based on what they knew at the time. In part, plaintiff bases this argument on a misinterpretation of the law which would, in her view, eliminate the truth defense.[4]

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[4]Plaintiff incorrectly suggests that truth is not a defense to a defamation *per se* case. This misconstrues the difference between the availability of the defense and the burden of establishing it. *See Beckham v. Sun News*, 344 S.E.2d 603,

In portions of her deposition which this court viewed, however, it was clear that plaintiff refused to provide reasonably requested detail as to what statements she believes were made, to whom, when, and who the witness to these statements may be. Further, throughout discovery, plaintiff resisted providing information which would relate to her mental health (either as it relates to the truthfulness of this claim or her claimed damages) and any problems relating to her professional competency. These factual matters are material to: whether any of the alleged statements were, in fact, made and, if so, the degree and nature of the publication; the truthfulness of whatever statements defendants may have made; and what damages plaintiff may have suffered as a result of any defamatory statements.

Similarly, plaintiff's reliance on *McKennon v. Nashville Banner Pub. Co.,* 115 S. Ct. 879 (1995) is misplaced. *McKennon* was a Title VII case which, at most, is applicable to this case by analogy. More significantly, *McKennon* does not stand for the proposition which plaintiff suggests which is that after-discovered evidence of wrongdoing by or incompetency of an employee has no relevance in a discharge action and is, therefore, protected from discovery. Quite the contrary, *McKennon* held that although after-discovered evidence of employee misconduct could not bar relief altogether, it could bear on the appropriate remedies. 115 S. Ct. at 885-87.

In short, the arguments made by plaintiff are based on incorrect interpretations of the cases on which she relies and do nothing to persuade this court that the information she avoided disclosing (either by her evasive answers, to written discovery

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604 (S.C. 1986).

requests and in her deposition, or by her unilateral termination of her deposition), was not material to the defense of this case. Moreover, plaintiff's arguments fail to dissuade this court from its firm conviction that plaintiff has deliberately evaded the spirit and letter of the discovery provisions of the Federal Rules of Civil Procedure and this court's many prior orders giving guidance as to discovery (which orders were frequently issued at plaintiff's request).

Finally, to the extent plaintiff is using this motion to reargue dismissal of the earlier action captioned *Fares & Faltas v. The University of South Carolina,* CA No. 3:94-1578-17, which she clearly appears to be doing, her position is rejected. The court has already denied plaintiff's motion for reconsideration of the dismissal of that matter which was dismissed on similar grounds.

For the reasons discussed above, this court remains convinced that defendants have been materially prejudiced and that no lesser sanction than dismissal is adequate to remedy the present or deter similar conduct by plaintiff. In addition, this court remains convinced that the sanction is the only one adequate to punish plaintiff's utter disrespect for the court and, therefore, to preserve the authority of the court.

B. Criticism of the special master and this court's treatment of plaintiff's disrespect for him

In Part I-b of her motion, plaintiff seems to argue that the court improperly: (1) relied on the special master; (2) delegated its power to him; and (3) took unreasonable offense at plaintiff's disrespect directed towards the special master.

The special master was appointed pursuant to this court's authority under Rule 53 of the Federal Rules of Civil Procedure. Once appointed, the special master served as an arm of this court and was to be accorded the same respect and obedience within the scope of his delegated powers. His powers related, specifically to oversight of all aspects of the conduct of the deposition. While this court made provision for certain appeals to it after the conclusion of the deposition, it made clear that the special master's rulings were to be obeyed. In any case, the record is clear that the special master obeyed his instructions and remained within the delegation of authority given him.

In numerous ways clearly demonstrated by the videotape record of the deposition, plaintiff treated the special master in a contemptuous manner. She disobeyed his rulings including by failing to return for the continuation of her deposition after being ordered to do so. She further treated him with disrespect in her written submissions. Her protestations to the contrary do not change the clear record.

Were this court to allow behavior such as plaintiff directed to the special master, as well as her disobedience of his directives, it would destroy the very useful purpose served by Rule 53. In the present case, this would have precluded any meaningful continuation of the deposition after plaintiff's first walk-out or would have required the complete dedication of a judicial officer to oversee plaintiff's deposition. This is a wholly unreasonable result.

In this light, the court finds that there is nothing further it could or should do to allow completion of discovery. Plaintiff has chosen to abuse the discovery process and the indulgences of the court at every turn. Having chosen this path, she is in no position to cry foul when the court has finally had enough and

dismisses plaintiff's claims for abuse of the discovery process. To require any more would be to allow the complete manipulation of the system by plaintiff to the great disadvantage not only of the defendants but of the integrity of the court.

C. Plaintiff's concern for the court's conscience

The court has great difficulty understanding what plaintiff is arguing or seeking in Part I-d of her motion other than her suggestion that the court has generally treated her unfairly. The court has more than adequately addressed these points in its numerous earlier orders. The court would not, therefore, comment on this document but for the closing comment which reads as follows:

> Dr. Faltas ends by imploring the Court to ask itself seriously, nay imagine, how it would have *really* felt if she had stayed in her deposition and had a stroke or died; or been detained and raped; or committed suicide. The answer should assure this Court that, far from disrespecting it, she spared its Honor intolerable guilt.

This comment demonstrates the utter lack of logic in plaintiff's various positions, particularly as to her justification for leaving her deposition. Moreover, it demonstrates plaintiff's propensity for offering a shifting list of after-the-fact justifications, generally without any foundation, when all that was necessary was a timely notification to the special master of whatever concern plaintiff may have had.

The only even arguably relevant risk addressed is plaintiff's suggestion that she might have been at risk of a stroke or other medical problem. As this court discussed in its prior order, plaintiff did nothing to alert the special master to any such concern before leaving the deposition. Such notice would not only lend some credence to her current claim but would have allowed appropriate action (including possible confirmation) at the time. Her later reliance on this position cannot, therefore, be accepted by this court. Were the court to accept plaintiff's post departure claims of illness, any person claiming medical expertise could disobey court orders with impunity so long as they were willing to affirm (several days later when it can no longer be confirmed) that they were "ill at the time."[5]

Beyond the health issue, plaintiff's claims are utterly ludicrous flights of fancy that are, frankly, quite offensive to this court. For instance, the suggestion that plaintiff's departure from her deposition was justified by a fear or risk of detention, rape or suicide has no foundation whatsoever other than plaintiff's fertile imagination.

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[5]Plaintiff suggested in one recent document that the court should have sent "a medical truth squad" to her home if it did not believe her claim of illness. Beyond the Orwellian dimension and obvious constitutional concerns with this approach, it lacks any logical basis. First, plaintiff did not make clear that she was claiming illness at all until the next morning. Even then, her only specific reference was to vocal cord injury. It was not until later that the blood pressure issue was even raised. Even were these problems overcome, the court cannot see why it should be required to go to any such lengths to save a civil litigant from her own flagrant disregard for the authority of the court and its special master.

Further, plaintiff did not suggest any concern about detention, rape, or even suicide to the special master before her departure as a reason for leaving the deposition. Neither did she suggest such a fear to this court in her subsequent motion to terminate or arguments related to the same. Indeed, to the best of this court's recollection, it saw the suggestion of a concern about rape for the first time in the past week and only as a rationale for plaintiff refusing to read her deposition transcript in the court reporter's home because there was no one else present.[6]

The court is, in fact, quite at a loss as to the specific basis of this fear. Certainly, it cannot be based on the document plaintiff attaches to this portion of her motion, a newspaper report appearing months after the deposition ended.[7] It would also not logically be based on a fear of physical harm from those at the deposition. The deposition was being conducted

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[6]The circumstances relating to the reading and signing of the deposition have nothing to do with the court's dismissal of this action. To the extent the asserted fear relates to the reading and signing of the deposition, therefore, this court will only note that there is nothing to spur this fear other than plaintiff's wild conjecture as to what *could* happen were she alone with a man.

[7]Plaintiff attaches to her motion a newspaper clipping from August 2, 1996, (four days before this portion of the motion was filed) which contains a short article titled "Inmate faces rape charges in attack on female prisoner." This has no bearing whatsoever either on the circumstances of plaintiff's deposition or even the basis of any fears she may have had when her deposition was conducted. (Mid-May 1996).

with at least six people present, half of whom were women and many of whom are officers of the court (four attorneys, a videographer, and a stenographic court reporter).

Similarly, plaintiff could not reasonably have based her now asserted fear of detention on Mr. Potts' suggestion shortly before that it might require a criminal contempt sanctions ("24 hours in a jail cell") to gain plaintiff's compliance with the special master's orders. Plaintiff was well aware that this was no more than a suggestion which was, at best, unlikely to result and certainly could not have occurred without a prior hearing. As the special master advised plaintiff, he had the power to *recommend* sanctions. In any case, a fear that the court might impose incarceration as a sanction for contempt would not justify flight. Otherwise, every criminal defendant could justify the same.

If, on the other hand, plaintiff is referring to some concern about walking to her car later in the evening, this court has no doubt whatsoever that one or more persons present at the deposition would have seen her safely to her car at the conclusion of the deposition had she expressed such a concern. Under the circumstances, this would have been perfectly adequate protection.[8]

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[8]This court understands that plaintiff was provided with handicapped parking next to the building where the deposition was being conducted. Her trip to her car would, therefore, have been short at worst. Further, given the time of year, the deposition would have needed to continue for several more hours before darkness would have been a concern.

For all of the above reasons, the court finds plaintiff's newly asserted "detention or rape" concern (and likewise the suicide concern to which this court does not recall any prior reference) utterly disingenuous. This court finds no reason to modify its prior ruling based on some later offered speculative "guilt trip" that plaintiff would like to conduct for the court.

II. THE PROPRIETY OF THE EARLIER RULE 11 SANCTIONS.

Plaintiff argues in one of the documents labeled "Part II" (filed August 2, 1996) as well as in an August 6, 1996 submission, that the court improperly imposed monetary sanctions for Rule 11 violations on her because she is immune from liability for legal arguments made by her lawyer in the complaint. The court will address this argument even though plaintiff did not raise it at the appropriate time (when the sanctions were under consideration or in the earlier motion(s) to reconsider imposition of sanctions or the dismissal motions on which they were based.

The specific provision on which plaintiff relies reads as follows: "Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2)." Fed. R. Civ. P. 11(c)(2)(A). Subdivision (b)(2) requires that "claims, defenses, and other legal contentions [in a signed filed document, or later advocacy] are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law." Fed. R. Civ. P. 11(b)(2).

Plaintiff's reliance on this subsection are misplaced for several reasons. First, although plaintiff was represented at the time the complaint was filed, she was not represented when she

later continued to vigorously advance the claims in the complaint both in oral argument and in written opposition to the defendants' dispositive motions.[9] Plaintiff's advancement of

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[9]This action was initially filed by counsel. The court granted counsel's request for the matter to proceed in forma pauperis. Within forty-five days thereafter, plaintiffs ought to consolidate this case with another within which she was proceeding pro se and sought to be allowed to sign pleadings in the proposed combined action on her own. The court denied this motion. Immediately thereafter, plaintiff's attorney sought to be relieved as counsel. Notably, this is the first document which appears to have actually been prepared by counsel (different type style, double spaced). This motion was granted.

In the interim between when counsel filed his motion to be relieved (July 7, 1995) and the date the court granted this request, counsel continued to sign all documents but they appear from form and type style to have been prepared by plaintiff. After August 24, 1995, plaintiff appears to have signed all pleadings including a combined response to all defendant's dispositive motions (which was filed on September 21, 1995. She filed a second memorandum of the same nature on September 28, 1996. Her former attorney filed some subsequent documents but only regarding sanctions motions which were asserted, in part, against him.

In addition, plaintiff argued the dismissal motions orally before this court and essentially reargued them in the Rule 11 proceedings. See generally, Documents signed by plaintiff filed September 28 and October 30, 1995 (Opposition to Rule 11 motions). November 2, 1995 (motion

the claims included, in some instances, motions for reconsideration filed after the court's dismissal of various claims and imposition of sanctions. Later advocacy is an independent basis for the imposition of sanctions as noted in the initial paragraph of subsection (b).[10]

Second, the imposition of sanctions against plaintiff was, at least in part, based on certain of her factual assertions which proved to have no foundation whatsoever. Rule 11(c)(2)(A) has no applicability to factual assertions.

Most of the remaining arguments regarding Rule 11 have been fully addressed in prior orders or simply justify no response. The court will, however clarify the reason it did not impose sanctions in favor of Ms. Eslinger as to all claims but did as to her law firm.

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to reopen summary judgment for one defendant), December 6 and 26, 1995 (opposing one Rule 11 motion and arguing for reconsideration of imposition of Rule 11 sanctions against plaintiff and her attorney). While plaintiff's arguments against Rule 11 sanctions are not themselves the basis for imposing sanctions, they provide a written record (in addition to the hearing transcripts of plaintiff's continued advancement of the legal positions advanced in the complaint.

[10]Although the court will not rely on this at this point, it notes that the complaint was clearly drafted by plaintiff who then convinced her attorney to sign the complaint despite certain misgivings on his part. The court's understanding on this point is based on arguments plaintiff and her attorney have made to the court as well as documents between them which they have submitted.

First, the court did award sanctions in favor of Ms. Eslinger, although not on one of the claims asserted against her. While that last claim was ultimately dismissed on summary judgment motion, the court found that the assertion of it did not rise to the level of sanctionable conduct. By contrast, there were a number of claims asserted against Ms. Eslinger and her employer (as this court read the complaint, both for Ms. Eslinger's conduct and conduct of others).[11] As to all these claims except the one referenced above, the court dismissed the claims on Rule 12(b)(6) or Rule 56 grounds and found the assertion of the claims sanctionable.

The fees awarded to Ms. Eslinger's employer were based on the claims for which it was independently dismissed. It would have no expenses as *respondeat superior* under the one remaining claim against Ms. Eslinger other than Ms. Eslinger's defense fees which were, as noted above, denied as to this one claim.

To the extent plaintiff continues her assertion that Ms. Eslinger's husband, another defendant dismissed from this action for lack of any factual or legal foundation, is responsible for Ms. Eslinger's actions, this argument is also unsupportable.

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[11]Plaintiff has since suggested that defendants and the court read her complaint too broadly. If so, the time for plaintiff to clarify the limited basis of the claims she was asserting was when faced with the first motion, argument, or document indicating a misunderstanding by the court or defendants. Quite the contrary, plaintiff only suggested this narrowing when the Rule 11 sanctions were raised. During other arguments, she had sought to broaden, not narrow, her allegations.

As the court previously advised plaintiff, the law of South Carolina has, for about a century, made clear that a husband is not responsible for his wife's judgments or debts (except in limited circumstances not relevant here). Plaintiff's current inference that the husband is the wife's "employer" (by arguing based on a *respondeat superior* theory) is equally unsupportable. Therefore, the sanctions awarded in his favor are not dependant on the disposition of the claims against Ms. Eslinger.

Plaintiff also argues that the court had a duty to dismiss her claims under 28 U.S.C. § 1915(d), if at all, and that because the claims were not dismissed prior to service, the court is precluded from imposing Rule 11 sanctions. Such an interpretation would turn a tool available to courts to protect defendants from frivolous claims into a shield to protect the filers of frivolous claims. Clearly, that is not the intent of this rule. Plaintiff's interpretation would, moreover, seriously impair significant due process rights of the defendants. It would also impose an incredible burden on the courts, deny the court the advantage of briefing by the parties when that would be helpful, and delay the service of most *in forma pauperis* complaints.

Not only is this court confident that none of these results was intended by Section 1915(d), but it is confident that plaintiff knows it. Clearly, she did not raise this argument at any earlier time despite her clear familiarity with the *in forma pauperis* provisions.

For the reasons discussed immediately above, the court finds no reason to modify its decision to impose Rule 11 sanctions.

III. THE COURT'S DISMISSAL OF VARIOUS DEFENDANT'S AND CLAIMS ON RULE 12(B)(6) AND 56 GROUNDS.

In what is, perhaps, intended as "Part III" (labeled as Part II and filed August 2) plaintiff challenges the court's earlier dismissal of various claims and defendants under Rules 12(b)(6) and 56 of the Federal Rules of Civil Procedure. The reasons for these dismissals were set out in various earlier orders, most of which were issued at least six or more months before the present motion. Plaintiff has also reargued some or all of these motions in one form or another. This court will not, therefore revisit these issues except as to the few points addressed below.

Plaintiff again argues, as in the submission discussed above, that once the complaint passed § 1915(d) muster, the court could not, on its own, raise a question as to the viability of a claim. Specifically, plaintiff seems to be referring to the court's various *sua sponte* orders of dismissal of various claims. The court does not see why, if it has authority to dismiss claims under 1915(d) before service, it cannot raise the same concerns later when it has had an opportunity to delve into the complaint and sort out the large number of overlapping claims to determine which are viable. In the present case, the court dismissed a number of claims relating to parties who had not yet appeared and which claims duplicated others the court had dismissed as to other parties on the same grounds. Certainly it was in the interest of judicial economy to do so.

If plaintiff felt this procedure precluded her from presenting legitimate arguments as to why dismissal was improper under 12(b)(6), she could have promptly brought that to the court's attention rather than relying on a procedural

challenge many months later after all the remaining claims have been dismissed for discovery abuse. In any case, plaintiff does not, in the present motion, raise any legal arguments relating to these claims which convince the court that it erred in its earlier dismissal of these claims.[12]

As to plaintiff's suggestion that the court made some egregious error by allowing defendants a two-day extension which matched plaintiff's two-day extension of the same deadline in which to brief the viability of the claims against one defendant, the court can only comment that it wanted simultaneous briefs. Therefore, to give plaintiff an extension, it necessarily had to give defendants the same extension. If the court made an error in granting this extension, it was in allowing it based on plaintiff's wholly unspecified "*quasi*-malfunction" of her computer. Even were the court somehow wrong in its decision, it can hardly imagine that this had any adverse impact on plaintiff.

Finally, the court believes that the reason for the ultimate dismissal of this case, an egregious pattern of discovery abuse, would justify dismissal of all claims against all defendants even if these defendants or specific claims against remaining defendants were not already dismissed. Certainly, this should apply as to any claims earlier dismissed against those defendants who remained in the case on other claims. This is

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[12]Plaintiff attaches several documents in support of this portion of her motion including a letter, an affidavit and a newspaper article. To the extent they have any relevance to the present motions, they do not support plaintiff's position. In any case, these documents would be inappropriate to consider as to any Rule 12(b)(6) motion.

because, under the unique circumstances of this case, the allegations are so overlapping and intertwined and the discovery abuse is so pervasive, that the court cannot reasonably imagine that plaintiff's actions would not have been wholly the same had all claims remained in against all defendants.[13]

Conclusion

For the reasons discussed above, this court denies plaintiff's motion to alter or amend the judgement. The motions for the court to delay consideration of any parts of the motion until all are received and the motion for a hearing or "particularly serious consideration" are moot.

IT IS SO ORDERED.

S/_____
Joseph F. Anderson, Jr.
United States District Judge

August 14, 1996
Columbia, South Carolina

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[13]While perhaps not a proper consideration here, the court notes that the expenses of defense, which have been driven up unreasonably by plaintiff's behavior, would likely have been borne in large measure by the same entities as to all claims against many of the defendants earlier dismissed.